

CHAPTER 10

THE FOREIGN INVESTMENT REVIEW BOARD AND COMMONWEALTH POLICIES

The Functions of the FIRB

10.1 The Foreign Investment Review Board is a part-time, non-statutory advisory body established in April 1976. It is comprised of four members including a Chairman, and an Executive Member who is also the Head of the Finance and Investment Division in the Treasury. The Board is supported by an Executive located within the Treasury.

10.2 The Treasurer is responsible for administering foreign investment policy, assisted by the Board which provides advice to the Government generally on foreign investment matters. The Board also:

- examines proposals by foreign interests for investment in Australia and makes recommendations to the Government on those proposals;
- fosters an awareness and understanding of the Government's policy in Australia and abroad; and
- provides guidance to foreign investors about aspects of their proposals which may not conform with Government policy and suggests ways by which the proposals might be amended.¹

¹ Foreign Investment Review Board, *Australia's Foreign Investment Policy*, 1989, p.1

10.3 The Board's current Chairman, Sir Bede Callaghan, advised the Committee that prior to the establishment of the FIRB, foreign investment matters were dealt with by the Treasury. In explaining the role of the FIRB, Mr George Pooley, the Executive Member, claimed that the purpose of the Board is to make sure the Treasurer has a wider sphere of advice than he would get simply from officials. The benefit, Mr Pooley argued, can be that people with different backgrounds bring different judgements to bear:

There are a lot of cases that are not clear-cut in terms of policy. Those parts of the policy that require economic benefits on the one hand and a loss of Australian ownership and/or control on the other call for judgment, and the judgments can vary depending on how much weight you give to the loss of ownership and control and how much weight you give to the economic benefits. It depends on what you think the stronger benefits are.²

The Committee accepts this view. Given the significance of foreign investment for Australia and the potential it has to affect the nature of Australian society, it is prudent to consult a wider range of opinion on specific proposals than that available in the Treasury. And a Board that meets regularly, bringing together this kind of expertise is desirable.

FIRB Independence

10.4 Although Mr Pooley notes that the Treasurer should be advised on foreign investment matters by a range of people, not just 'officials', questions remain about whether the FIRB is the best source of such guidance given the ways in which the FIRB operates and the way in which it is currently constituted. If it is accepted that it is prudent for the Commonwealth Government to receive advice on foreign investment proposals which is additional to that available from the Treasury, then it would be counterproductive not to permit such advice to be independent.

² *Evidence*, pp. 169-70

10.5 In his submission, the Chairman of the FIRB advised that tasks associated with the assessment of foreign investment proposals are performed by Treasury: officers of the Treasury 'do the work'.³ The Board's Executive Member, Mr Pooley, confirmed that Treasury draws up a report after consultation with other departments. That report, containing a formal recommendation, is then sent to the FIRB which looks at the recommendation, reads the report and decides whether it wants to change the recommendation or to go along with the one that is made.⁴ Where the FIRB does not accept the recommendation and expresses an alternative view, that is then presented to the Treasurer. According to Mr Pooley:

What we really do, I think, is to prepare a draft minute to the Treasurer which we send to the Board and, to the extent that the Board wants to change it, then it changes it. That minute goes to the Treasurer. It is just sent to the Treasurer by us along with all the other minutes that are going to him, but it is on separate paper, headed 'Foreign Investment Review Board', and it contains all the views of everybody, including the views of the FIRB.⁵

10.6 While the FIRB can advise the Treasurer against a view put by the Treasury about a foreign investment proposal, there are three facts suggesting that the FIRB is less than independent in the consideration process.

10.7 First, as has been noted already, the Executive Member of the FIRB is a Treasury official. That officer advised the Committee that he supervises the preparation of the Treasury position on a proposal, and presents this to the FIRB where he argues the Treasury case.⁶

³ *Submission No. 64*, p. 3

⁴ *Evidence*, p. 168

⁵ *Evidence*, p. 176

⁶ *Evidence*, p. 173

10.8 Second, the document considered by the FIRB is in fact a Treasury minute comprising Treasury advice, including options and a recommendation to the Treasurer.⁷ The involvement of the FIRB, then, is by way of comment on a Treasury document rather than generating its own separate advice. This process is exposed to the suggestion that the FIRB could be perceived merely as a rubber stamp for Treasury decisions about foreign investment rather than an authority examining proposals and providing specific advice to the Government; this is one of the functions outlined in the FIRB 1989 policy document, *Australia's Foreign Investment Policy*.⁸

10.9 Third, the Chairman advised that the FIRB does not have its own staff, or offices, either in Sydney or other State capitals. If letters are to be sent to the FIRB, they must be addressed to the Treasury. Further the Chairman of the FIRB is not provided with independent secretarial assistance.⁹ The Chairman advised that he was not even able to locate FIRB letterhead stationery for his own use.¹⁰ Without staff of any kind or its own research resources, the independence of the FIRB is particularly constrained.

10.10 These facts indicate to the Committee that the FIRB could have been operating to confirm Treasury advice rather than to provide separate additional guidance on foreign investment proposals. The FIRB's lack of an independent research capability is of particular concern. In order to provide its own analysis and comment on the projects that it reviews, the FIRB should be comprised entirely of members currently not employed in other capacities by the Commonwealth Government and should have competent resources. To function as an independent source of advice to the Treasurer, it should retain its own Secretariat.

⁷ *Evidence*, p. 175

⁸ *Australia's Foreign Investment Policy*, p.1

⁹ *Submission No. 64*, p. 1

¹⁰ *Evidence*, pp. 556-7

Commonwealth Foreign Investment Policy

The Guidelines

10.11 Policy concerning foreign investment in Australia is designed to be consistent with the Government's other objectives. While it encompasses both the *Foreign Acquisitions and Takeovers Act 1975* and other requirements set down by way of Ministerial statement, the policy is administered through guidelines rather than rules. The Treasurer confirmed in 1989 that the Australian Government welcomed foreign investment, and recognised the substantial contribution it has made, and can continue to make, to the development of Australia's industries and resources. The Government encourages direct foreign investment consistent with the needs of the Australian community, including the expansion of private investment, the development of internationally competitive and export-oriented industries and the creation of employment opportunities.¹¹

10.12 In its annual reports the FIRB lists¹² the legislation, policy statements and publications that contribute to Australia's foreign investment policy; and this policy was summarised by the Treasury in its submission (No. 25a). The Treasury advised that the policy was designed and administered to encourage foreign investment and ensure that it was consistent with the national interest. It recognises that foreign capital supplements domestic savings, and adds to the total pool of funds available for investment. Treasury's submission states that only through increased investment can the economy continue to grow and employment levels rise. It goes on to suggest that foreign investment also provides other benefits such as access to new technology, management skills and markets.¹³

¹¹ *Australia's Foreign Investment Policy*, p. v

¹² A complete list can be found in Appendix 5

¹³ *Evidence*, p. 1401

10.13 As with other areas of Government policy, the guidelines against which foreign investment in tourism is assessed change over time to reflect emerging economic, social and political contingencies. For example, Treasury advised that, against the background of Australia's external account difficulties, the Government liberalised its foreign investment policy guidelines in July 1986. The requirement that foreign interests proposing to acquire existing tourism businesses (such as hotels and motels) should demonstrate net economic benefits to Australia, was replaced by the present policy that proposals are normally approved unless found to be contrary to the national interest. The requirement that there be at least 50 per cent Australian equity and joint Australian/foreign control in respect of all new tourism businesses (involving a total investment of \$10 million or over) was also abolished.¹⁴ The Committee endorses the 1986 reforms to the foreign investment guidelines as they apply to the tourism sector.

10.14 In July 1991, the Treasurer, the Hon. John Kerin, announced an easing in the guidelines for foreign investment in tourist-related developments. The changes to the guidelines included:

- foreign investors can acquire any residential real estate (vacant land for development, units off the plan, or established properties) within a designated Integrated Tourism Resort (ITR) without the need to seek approval under the *Foreign Acquisitions and Takeovers Act 1975 (FATA)*;
- all new and used dwellings in an ITR as well as those under construction or 'off the plan', owned by Australian residents or foreign interests, can be acquired and resold to other foreign investors without requiring approval under the FATA; and
- the ITR exemption applies only to residential real estate within resorts that have applied for and been designated exempt by the Foreign Investment

¹⁴ *Evidence*, p. 1408

Review Board. All other real estate acquisitions by foreign interests remain examinable under existing residential real estate policy.¹⁵

10.15 Following this statement it was reported that the Gold Coast property market was likely to be the main beneficiary of the changes to FIRB guidelines due to the number of integrated tourism resorts, both operating and planned, in the area. It was anticipated that primarily it would be residential sales affected after the decision to allow foreigners to buy up to 100 per cent of residential property in integrated tourism resorts without the need for Government approval.¹⁶

10.16 In February 1992, the *One Nation* statement announced further changes concerning foreign investment in the tourist industry. Within the Department of Prime Minister and Cabinet, a group would be established to guide proposals through the Commonwealth's approval processes without unreasonable delay. The Government would cease to examine proposals by foreign interests - other than foreign governments - if they proposed to acquire 15 per cent or more of a company or business with total assets of less than \$50 million, or establish a new business with a total investment of less than \$50 million.¹⁷ The process for approvals would be streamlined, and delays experienced by some developers in the tourist sector would be minimised. Potentially, this would make the Australian tourist industry a more attractive proposition for foreign investors. A further change announced by the Prime Minister may also prove beneficial for developers considering new tourist resorts and hotels. *The Business Review Weekly* reported that the package favours larger enterprises, including those using foreign capital. Projects worth more than \$50 million will attract a special 10% development allowance if completed within a 'tight time-frame'.¹⁸

¹⁵ The Hon. J. Kerin, *Press Statement*, 25 July 1991

¹⁶ *The Weekend Australian*, 27-28 July 1991

¹⁷ *The Sydney Morning Herald*, 27 February 1992, p. 4s

¹⁸ *The Business Review Weekly*, 28 February 1992, p. 45

10.17 The Committee commends the reform process that has taken place in recent years to facilitate foreign investment in the Australian tourist industry within the national interest.

Enduring Criteria

10.18 In the context of changes to the Commonwealth guidelines, the Committee considers that four key criteria for assessment must remain constant. These are:

- the national interest;
- economic benefit to Australia - including employment growth;
- environmental preservation; and
- social impact.

National Interest

10.19 Foreign investment is undertaken by foreign interests and the FIRB is required to ensure that it is consistent with Australia's national interest. The FIRB defines foreign interest as a natural person not ordinarily resident in Australia, and any corporation, business or trust in which there is a substantial foreign interest, regardless of whether the corporation, business or trust is foreign-controlled.¹⁹ However, the Board's Executive Member was unable to provide the Committee²⁰ with a definition of 'national interest', although the point was made that the Board examines proposals to assess the benefits that would be provided to the nation.²¹

¹⁹ *Australia's Foreign Investment Policy*, p. 1

²⁰ *Evidence*, pp. 167, 185

²¹ *Evidence*, p. 189

10.20 This inability to define national interest is important because foreign investment proposals may be approved except where they are considered to be contrary to the national interest. Without a reasonable definition that is regularly employed by the FIRB (and which is accepted by all interested parties) it is not clear how the FIRB is able to determine whether a proposal is in the national interest.

10.21 A further problem is that, as has already been noted, the FIRB is currently unable to provide independent assessments to the Government about proposals because of the lack of resources under which it operates. If, as Mr Pooley suggests,²² the Board examines proposals to determine the benefit they might provide to Australia, competent resources must be employed to conduct this assessment for the Board.

10.22 In its submission the Treasury mentioned the protection of the national interest: it has stated that its policy is designed and administered to encourage foreign investment in Australia and ensure that such investment is consistent with the national interest.²³ Nevertheless, like the FIRB, Treasury did not provide a definition of national interest, although it noted that in forming a judgement about whether a proposal would be contrary to the national interest, the Government considered policy matters rather than legal issues including:

- the impact of a proposal on the environment;
- local employment;
- exploitation of Australian research; and
- competition within an industry sector.²⁴

²² *Evidence*, p. 170

²³ *Evidence*, p. 1401

²⁴ *Evidence*, p. 1402

Economic Benefit

10.23 With regard to economic benefit, the FIRB has assured the Committee that this criteria is comprehensively employed. The FIRB Executive Member, Mr Pooley, confirmed that the Board does not prepare 'commercial assessments'; however, the FIRB looks at the economic benefits and the return to the nation.²⁵

10.24 Indeed, Mr Pooley advised that the economic benefits are compared against the disadvantage of foreign ownership, and suggested that there should be sufficient economic benefits to offset the loss of Australian ownership and control.²⁶ Mr Pooley advised that many cases were not clear cut, requiring judgement about economic benefits on the one hand and a loss of Australian ownership and/or control on the other. Mr Pooley suggested that these judgements are necessarily subjective and depend on how much weight is given to the loss of ownership and control and how much weight is given to the economic benefits.²⁷

10.25 The Treasury submission confirmed that its approach to preparation of the minute to the Treasurer about foreign investment proposals evaluated the economic benefits and costs involved:

The examination process normally involves the preparation of a minute providing details of a proposal identifying any aspects which might be thought to raise national interest considerations, evaluating where applicable the economic benefits and costs expected to rise from the proposal, noting the proposal's implications (if any) for the foreign ownership and control of the business and the industry sector concerned, and concluding with a judgement about the conformity of the proposal with the guidelines of foreign investment policy, which takes into account comments provided by

²⁵ *Evidence*, p. 189

²⁶ *Evidence*, p. 197

²⁷ *Evidence*, p. 170

interested third parties, including government organisations.²⁸

Environmental Preservation

10.26 There are numerous Acts which apply to decision-making by the FIRB apart from those listed by the FIRB in its annual reports. One of those is the *Environment Protection (Impact of Proposals) Act 1974*, which has as its object that matters affecting the environment to a significant extent are fully examined and taken into account in relation to certain activities carried out on behalf of the Australian Government or Australian authorities; they include the making of decisions and recommendations²⁹. Accordingly, where its decisions or recommendations would have a significant effect on the environment, the FIRB is obliged to comply with the Act. While only the Minister responsible for the Environment can determine that an Environmental Impact Statement is required in any particular case, the Act places a duty on all Commonwealth Ministers to ensure that environmental factors are taken into account in the administration of their portfolios.³⁰

Social Impact

10.27 It cannot be in the national interest to improve economic circumstances at the risk of considerable environmental damage. For this reason it is entirely appropriate that the Treasurer's decisions on the basis of FIRB advice be subject to the *Impact of Proposals Act*. Similarly, however, it cannot be in the national interest for Australia's economic circumstances to be improved at the risk of substantial social dislocation. For this reason foreign investment proposals should be assessed against social impact criteria where appropriate.

²⁸ *Evidence*, p. 1403

²⁹ *Environment Protection (Impact of Proposals) Act 1974*, s.5

³⁰ Australian Environmental Council Report No. 18, *Guide to environmental legislation and administration arrangements in Australia*, p. 40

10.28 At present the FIRB is not sponsoring such assessments. At a public hearing on 8 March 1991 the following exchange took place with the FIRB Executive Member, Mr G. Pooley:

Chairman - This Committee is interested to consider people as part of the environment. We understand this may be something of a novelty, but we wish to do it. Do you know if any of the environmental impact statements have looked at the effect on a local community in terms of what is good or bad?

Mr Pooley - No, I do not.

Chairman - That is you do not know?

Mr Pooley - I cannot think of a case in which it has happened.³¹

Further, in its submission DASETT advised that socio-economic factors are often not adequately considered although the Federal and some State systems make provision for consideration of these factors.³²

10.29 DASETT has subsequently advised the Committee that there is an obligation under the *Impact of Proposals Act* for effects of social significance to be considered but only where they are interrelated with physical effects. Advice DASETT received from the Attorney-General's Department indicated there is nothing in the current procedures to support a contention that *social factors alone* give rise to any public duty to require the preparation of environmental impact statements.³³

Advice from the Attorney-General's Department indicates that the meaning of 'environment' can be construed to mean that where economic or social and natural or

³¹ *Evidence*, p. 186

³² *Evidence*, p. 42

³³ *Letter to Committee*, 26 July 1991

physical environmental effects are interrelated, the assessment will consider all these effects on the human environment. That advice also says there is nothing in the current procedures to support a contention that *social factors alone* give rise to any public duty to require the preparation of environmental impact statements.³⁴

10.30 DASETT also advised that while socio-economic aspects of a proposal can be taken into account in environmental impact assessments, the process is not designed to address these primarily. In some cases purely socio-economic impacts are not assessed or indeed projects whose impact is primarily social may not come under the Act at all.³⁵

The cited extract from DASETT's submission to the inquiry into the Australian Tourism Industry reflects the fact that while socio-economic aspects of a proposal can be taken into account in environmental impact assessment, the process is not designed to address these primarily. In some cases this might mean that some purely socio-economic impacts are not assessed or indeed that projects whose impact is primarily social may not come under the Act at all. This, for instance, is the tenor of the Attorney-General's Department's advice in regard to the proposed Canberra casino. This position is not satisfactory to some sectors of the community who feel that the impact assessment process, as the only established impact assessment mechanism available, should be made to take a broader role.³⁶

10.31 The Committee understands the limits of the *Impact of Proposals Act* as articulated by the Attorney-General's Department. The Committee further understands, however, that it is proper to seek social impact statements in certain circumstances under the Act. Given the significance of social impact for many new developments, including those in the tourism industry, the Committee considers that

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

every effort should be made to ensure that social impact is considered wherever appropriate.

10.32 Having examined the approach of the FIRB and the Treasury to the issue of foreign investment with regard to national interest, economic benefit, environmental preservation and social impact, the Committee has concluded as follows. First, the concept of national interest has not been well-articulated by either the FIRB or Treasury; it would be helpful for the concept to be clarified in the interests of decision-making on foreign investment by those authorities. Second, the Committee considers that the Treasury should be well-placed to assess the economic benefit of foreign investment proposals. Third, foreign investment proposals having an impact on the environment to a significant extent are covered by the *Environment Protection (Impact of Proposals) Act 1974* and require environmental impact statements. The FIRB is bound to comply with this Act. Nevertheless, the social impact of foreign investment proposals has not been adequately addressed by the FIRB. The FIRB needs to acknowledge its responsibilities under the Act (as advised by the Attorney-General's Department) for social impact assessments and request such assessments for foreign investment proposals where appropriate.

The FIRB Process

10.33 The FIRB process fall into three categories:

- proposal notification;
- proposal approval; and
- monitoring and maintaining records.

Proposal Notification

10.34 On 27 February 1992, following the *One Nation* Statement, the Treasury issued revised guidelines for foreign investment as follows:

The Type of proposals by **foreign interests** to invest in Australia which should be notified to the Government can be summarised as:

- acquisitions of **substantial interests** in existing Australian businesses with total assets over \$5 million (\$3 million for rural properties);
- plans to establish new businesses involving a total investment over \$10 million.
- investments in the media irrespective of size;
- direct investments by foreign governments or their agencies irrespective of size;
- acquisitions of non-residential commercial real estate valued over \$5 million;
- acquisitions of residential real estate irrespective of size (unless exempt under the regulations);
- takeovers of offshore companies whose Australian subsidiaries or assets are valued over \$20 million or account for more than 50 per cent of the target company's global assets; and
- proposals where any doubt exists as to whether they are notifiable.

The Foreign Acquisitions and Takeovers Act 1975 applies to most examinable proposals and provides penalties for non-compliance.³⁷

10.35 With regard to proposals subject to the *Foreign Acquisitions and Takeovers Act*, some notifications are compulsory while others are not. The Act (sections 26 and 26a) makes it compulsory for a foreign interest to notify proposals to acquire:

- a substantial shareholding (more than 15 per cent) of an Australian corporation unless the total assets of the target company are below \$5 million (\$3 million for rural properties); and
- an interest in Australian urban land (unless exempt under the Foreign Acquisitions and Takeovers Regulations).

³⁷ Prime Minister Keating, *One Nation Statement*, 27 February 1992

Section 25 of the Act, however, does not have a compulsory notification requirement. That section covers off-shore takeovers, takeovers of businesses by purchase of assets or acquisitions of shareholdings in Australian companies that are less than substantial shareholdings.

10.36 When formal notification under sections 25, 26 and 26a occurs, the Treasurer must take action within 30 days or the Government loses the ability to either block the proposal or impose conditions on its approval. This statutory 30 day examination period may be extended for up to a further 90 days by the issue of an interim order.³⁸

Proposal Approval

10.37 The FIRB claims that it ensures proposals are examined quickly with the majority of proposals being considered by the Board and decisions being reached by the Government within thirty days of lodgement.³⁹ Indeed, simple applications required under the *Foreign Acquisitions and Takeovers Act* are dealt with under ministerial delegation. Treasury officials have power to approve proposals within limits consistent with policy. The ministerial delegation, however, does not permit proposals to be rejected by Treasury officials.⁴⁰

10.38 With regard to proposals in the tourism sector (and a range of other industries) the Treasury's revised guidelines issued on 27 February 1992 state:

The Government registers, but raises no objections to, proposals above the notification thresholds (ie \$3 million for purchases of rural properties, \$5 million for acquisitions of substantial interests in other existing businesses, \$10 million for the establishment of new businesses, \$20 million for offshore takeovers) where the

³⁸ *Australia's Foreign Investment Policy*, p. 11

³⁹ *Australia's Foreign Investment Policy*, p. 3

⁴⁰ *Evidence*, p. 168

relevant total assets/total investment fall below \$50 million.

The Government examines proposals to acquire existing businesses (with total assets over \$50 million) or establish new businesses (with a total investment over \$50 million) and raises no objections to those proposals unless they are contrary to the national interest. Offshore takeovers do not generally raise national interest issues.

...

Proposed acquisitions of **real estate for development** (within 12 months) are normally approved unless they are contrary to the national interest.

Foreign interests are normally given approval to buy **vacant residential land** (on condition that construction of a dwelling is commenced within 12 months) and to buy home units, townhouses etc '**off-the-plan**', under construction or newly constructed but never occupied, on condition that no more than half of the units in any one development are sold to foreign investors.

Proposed acquisitions of residential property (both vacant land and existing dwellings) which are within the bounds of a resort that the Treasurer has designated as an '**Integrated Tourist Resort**' are exempt from examination.⁴¹

10.39 In evidence before the Committee, Treasury advised that conditions are often imposed on approvals to ensure that particular proposals are consistent with policy and not otherwise contrary to the national interest.⁴² For example, environmentally sensitive proposals are often subject to environmental assessment under the *Impact of Proposals Act*, or at the State level, prior to granting approval. However, they can also be subject to conditions requiring the parties to consult with relevant State and/or Commonwealth bodies prior to the implementation of the

⁴¹ *One Nation Statement*, 27 February 1992

⁴² *Evidence*, p. 1404

proposal.⁴³ The option of a conditional approval is particularly attractive. It has the virtue of ensuring that projects are completed in ways considered to be consistent with the national interest. Indeed, it may be undesirable for unconditional approvals to be provided as a matter of course.

10.40 While the FIRB attempts to make some assessment of the national economic benefit of foreign investment proposals, it has approved foreign investments in tourism that have proven to be commercial failures. It was suggested to the Committee that the FIRB should assess whether projects would be successful commercially. The Acting General Manager (Planning and Development) of Tourism South Australia suggested one of the criteria the FIRB should consider when making decisions based on 'national interest' or State interest, is whether the development is likely to return a net benefit to the community.⁴⁴ Further, Mr J. Domelow, a Committee Member of the Magnetic Island Tourist Association, advised:

What we are saying there is that we would like a level playing field where all the rules are the same - whether it be State, Federal, local or whatever - so that everyone, whether they oppose the developments or whether they are for the developments, knows what the rules are and as part of those rules there should be the need for a viability study. Whether that is FIRB or who it is, I am not sure.⁴⁵

When asked whether he was suggesting a role for the government to examine the viability of a project, Mr Domelow confirmed that he was.

10.41 The Committee does not agree with the view that the FIRB should assess the commercial viability of foreign investment proposals before they are approved for two reasons. First, the Committee accepts the advice of the FIRB

⁴³ *Ibid.*

⁴⁴ *Evidence*, p. 760

⁴⁵ *Evidence*, p. 1073

Executive Member that the FIRB considers the economic benefits the nation would get from foreign investment but that no commercial assessment of a project's viability is undertaken due to the size of the task.⁴⁶ Given that more than 2800 proposals were submitted to the FIRB in 1990/91, it would be ridiculous to suggest commercial viability studies for all proposals.

10.42 Second, it is unclear what commercial criteria would be employed by the FIRB even were it able to conduct commercial assessments. The Committee has been advised that many foreign investors are content to be patient over the long term before achieving yields on their investments in tourism.⁴⁷ How could the FIRB determine what was a reasonable period of investment? Further, unlike others, tourism investors may not require a high return on their capital. It is unclear how the government could make determinations about the commercial viability of projects based on speculation about desirable rates of return.

Monitoring Developments and Maintaining Records

10.43 One significant benefit of monitoring foreign investment projects is that, where approval is conditional, the Commonwealth can be satisfied that the conditions have been met. The Chairman of the Tourism Task Force claimed that while the FIRB often approves projects with specific development timeframes, this is not well monitored. He cited the case of Iwasaki at Yeppoon where a project which was given two years for completion had not been started eight years later. He claims similar problems have occurred in Surfers Paradise.⁴⁸

10.44 The need to ensure that developments comply with conditional approval, then, is one reason for conscientious monitoring of foreign investment projects. Another reason is to gauge the extent of foreign investment actually

⁴⁶ *Evidence*, p. 189

⁴⁷ *Evidence*, p. 236

⁴⁸ *Evidence*, pp. 350-1

outlayed in Australia. And a third reason is to acquire a knowledge base that can contribute to the capacity to review future foreign investment proposals.

10.45 The State Government of Victoria emphasised the inadequacy of information concerning the extent of foreign investment in tourism facilities in Australia; it concluded:

It has therefore become increasingly evident that improved information systems should be established which will allow the effective monitoring of investment patterns in the industry at a National level.

This will put both Federal and State Governments in a position where trends can be identified and via a process of Federal/State consultation, decisions can then be made on the need or otherwise to fine tune foreign investment policy and guidelines to protect the interest of Australians.⁴⁹

10.46 Treasury has advised that it monitors some foreign investment projects post-approval, but not others. Large projects tend to monitor themselves because they tend to stay in the press and have a public opening. If Treasury has reason to be doubtful about a proposal that is approved, it is more likely to be monitored.⁵⁰

10.47 Further, Treasury does not keep formal records on the projects that it does monitor, relying instead on two ad hoc methods:

- previous proponents seeking approval for a further project are asked for details about the progress of the initial project; and
- press reports and cuttings about major projects are put on file.⁵¹

⁴⁹ *Submission No. 60*, pp. 5-6

⁵⁰ *Evidence*, pp. 179-80

⁵¹ *Evidence*, p. 180

The following exchange took place with the FIRB Executive Member at the public hearing on 8 March 1991;

Senator BOURNE - Do you keep records on the ones you do monitor? Can you look back on something after five years and see whether it has gone the way you thought it would and use that for the future?

Mr POOLEY - We do not formally do that, but it tends to happen in other ways to the extent that it does happen. A company that has done one investment will often come and seek approval for another. When it comes for the second one we ask how it is getting on with the first one and get a report. It is rather ad hoc and we do not do a lot of it. We certainly do not monitor them all. ... We know about some and we do not know about others. ... It is not as simple as it seems to be. We often find out about particular proposals and what is happening to them partly by chance, partly by press reports and so on. To that extent we monitor what is going on. If there is a press cutting that is relevant to progress or something, we put it on the file.⁵²

10.48 The FIRB Executive Member, Mr Pooley, subsequently explained that Treasury did not have the resources to monitor the projects which it has approved. He told the Committee that it would be possible to employ a section or a branch to undertake monitoring, but that if Treasury wanted to do a thorough job a division of 60 people might be required, and even so there was no certainty the work load could be managed.⁵³ Treasury admitted however that it could strengthen the foreign investment approval process if it could be demonstrated that decisions taken resulted in actual projects.⁵⁴

⁵² *Evidence*, p. 180

⁵³ *Evidence*, p. 182

⁵⁴ *Evidence*, pp. 182-3

10.49 In that almost 2525 proposals were approved by the FIRB in 1990/91, the Committee acknowledges the extent of the monitoring and recording task were it to be pursued comprehensively by Treasury. It is important for the Commonwealth to know what proposals proceed and the timeframe within which they are completed; the foreign investment proposals approved for 1990/91 amounted to \$20.2 billion and many are subject to time limits for completion.⁵⁵ Indeed, the Treasury has confirmed that, at present, many conditional approvals entail reporting requirements.⁵⁶

10.50 One way in which all new developments could be monitored and recorded with minimal effort would be to make approvals conditional upon a reporting requirement for commencement, progress and completion. And, subject to the availability of resources, random checking of such reports could be pursued. Similarly, all foreign investment proposals for tourism could be subject to reporting requirements. If the results were assessed by the FIRB, decision-making on foreign investment would be significantly improved. As a further benefit, knowledge of the economic significance of foreign investment in Australia would be increased; the statistics would be published.

State Governments and the FIRB

10.51 Although the FIRB is responsible for implementing national foreign investment guidelines, States also play a role in the process. The FIRB has noted that both State and Federal Government departments and authorities with responsibilities relevant to the proposed activity of the foreign investor may be consulted. This consultation is undertaken on a strictly confidential basis.⁵⁷

⁵⁵ Foreign Investment Review Board, *FIRB Report 1990-91*, p. 2

⁵⁶ *Evidence*, p. 1430

⁵⁷ *Australia's Foreign Investment Policy*, p. 4

10.52 This matter was the subject of comment before the Committee in a public hearing. The FIRB Executive Member advised that where a proposal involved the takeover of a company with many employees in several States, the proposal would be referred to each State government, especially if there were to be any rationalisation of factories and jobs.⁵⁸

10.53 Further, in its submission the FIRB explained that its consultation with the States on foreign investment extends much more widely than economic issues. For tourism related proposals, the Executive normally consults relevant State and Commonwealth Departments for comments on heritage, environmental and industry aspects. These comments are incorporated in the FIRB report to the Treasurer along with the views of the Board; private representations concerning proposals are also referred to in the report.⁵⁹ Treasury advised the Committee that for individual proposals, the Minister received a summary of the views not only of the Board (or its Executive), but also those of the parties involved in the proposed transaction, Government departments and sometimes representations from individuals and industry organisations.⁶⁰

10.54 The Queensland Government advised the Committee it supported the Commonwealth foreign investment guidelines. In addition, when assessing foreign investment proposals in the tourism sector, the Queensland Government also pays regard to:

- the impact of development on the local and regional communities;
- the potential of the foreign investor to make a positive contribution to the local tourism industry; and

⁵⁸ *Evidence*, p. 187

⁵⁹ *Evidence*, pp. 1403-4.

⁶⁰ *Evidence*, pp. 1403-4.

- the level of concentration of foreign ownership and control within the local tourism industry.⁶¹

10.55 The Queensland Government submission advised that in February 1990 it established a Foreign Investment Secretariat as part of the Commercial Policy and Projects Division of the Queensland Treasury. The Secretariat is responsible for implementing the Queensland Government's approach to foreign investment, and is examining the impact of foreign investment on the Queensland tourism industry. The study addresses five major issues surrounding the impact of foreign investment on tourism:

- (1) An assessment of the availability of domestic funding and equity for developing tourism projects in Queensland;
- (2) An identification of the existing level of foreign ownership in the industry;
- (3) An examination of the socio-economic benefits and costs of foreign investment in the industry;
- (4) A comparative study of foreign investment and the Hawaiian tourism industry specifically identifying impacts on local communities and possible policy implications for Queensland; and
- (5) An attitudinal survey to assess the level of, and reasons for, opposition towards foreign investment in Queensland's tourism industry.⁶²

10.56 Tourism South Australia also provided evidence on the role of State Government with regard to foreign investment. Tourism South Australia suggested to the Committee that State land use planning systems are adequate for controlling

⁶¹ *Submission No.100*, p.6

⁶² *Submission No. 100*, pp. 7-8

development but that the Commonwealth should continue to have the ability through the FIRB to withhold approval for proposals that are not in the national interest. (It is argued that the Resource Assessment Commission could be an appropriate means of addressing exceptional issues involving national resources.) Tourism South Australia believes the Commonwealth's role lies primarily in:

- monitoring the level and impacts of foreign investment in tourism;
- developing criteria which establishes the national and regional interest;
- facilitating the sharing of strategic planning experiences between States; and
- encouraging joint venture foreign investment with Australian investment.⁶³

Conclusions

10.57 Significant changes have been made to Australia's foreign investment policy since 1986; they have facilitated the process of foreign investment in the Australian Tourism Industry.

10.58 Further, in order to exploit a wide range of advice for the Treasurer on foreign investment proposals, independent expertise needs to be available; this has been intended by the operation of the FIRB.

10.59 However, the FIRB process for monitoring projects which have been approved has not been nearly as comprehensive as it ought to be. Additionally, the FIRB has been less than fully independent.

10.60 The FIRB needs to ensure that approved projects are monitored carefully; the new guidelines relating to depreciation for early completion of large projects will require accurate monitoring to determine the compensation payable.

⁶³ *Submission No. 41*, p. 20

10.61 Finally, the Committee has determined that, with regard to the social impact of various proposals, the FIRB needs to acknowledge the full scope of its responsibilities under the *Impact of Proposals Act*.

Recommendations

10.62 That, for foreign investment in the tourism industry, the liberalised policy on foreign investment since July 1986 be maintained.

10.63 That, for the purpose of advising the Treasurer on foreign investment proposals, the Foreign Investment Review Board (FIRB) continue.

10.64 That to become more independent, the FIRB be restructured as follows:

- that the Board be comprised of permanent part-time members none of whom are selected from the Commonwealth bureaucracy;
- that the Board be served by a Secretariat; and
- that the Board establish and maintain its own office.

10.65 That, with regard to foreign investment proposals, the Treasury documents be copied to the FIRB for its independent comment and advice direct to the Treasurer.

10.66 That FIRB approval for foreign investment in new developments for the tourist industry be conditional upon a requirement to report progress on the development each six months from the date of approval until completion of the development.

10.67 That the FIRB maintain sufficient resources to monitor foreign investment proposals that have been approved and provide that information in its annual reports.

10.68 That statistics concerning foreign investment proposals in tourism facilities from investors' reports be provided to the ABS for subsequent publication (conjointly with the BTR).

10.69 That in complying with the Environment Protection (Impact of Proposals) Act 1974, the FIRB request social impact statements which include employment projections, time for completion and long term employment, where appropriate, in addition to environmental impact statements.

10.70 That the FIRB ensure potential developments are based on market research.

